RECEIVED
OCT 12 1978
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

HENRY ALBERT SMITH,

APPELLANT,

VS.

JAMES C. WOODARD AND MEMBERS OF THE STATE OF NORTH CAROLINA PAROLE COMMISSION,

APPELLEES.

NO. 78-5551

PETITION FOR WRIT OF CERTIORARI PURSUANT TO 28 U.S.C. § 1651(a). DECIDED ON SEPTEMBER 11, 1978, IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT. CASE NO. 78-8064.

HENRY ALBERT SMITH
NO. 20128-92
P. O. BOX 217
YANCEYVILLE, NORTH CAROLINA 27379
Per se

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HENRY ALBERT SMITH, APPELLANT, VS. JAMES C. WOODARD AND MEMBERS OF THE STATE OF NORTH CAROLINA PAROLE COMMISSION, APPELLEES.	78-5551 NO. _____

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Comes the appellant Henry Albert Smith and moves the Court to proceed in this action in forma pauperis pursuant to 28 U. S. C. § 1915 (d) without first being required to pre-pay fees and costs or otherwise being required to give security therefor. In support of this motion appellant has attached his Affidavit of Poverty hereto.

Respectfully submitted,

s/s Henry Albert Smith
Appellant, pro se

Dated: August 9, 1978.

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WASHINGTON, D. C.

78-5551

HENRY ALBERT SMITH,

APPELLANT,

VS.

NO. _____

JAMES C. WOODARD AND MEMBERS OF THE STATE OF NORTH CAROLINA PAROLE COMMISSION,

APPELLEES.

MOTION FOR THE APPOINTMENT OF COUNSEL

TO: THE CHIEF JUSTICE AND THE ASSOCIATES JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Comes the appellant Henry Albert Smith and respectfully motions for legal assistance and give credence to this motion, states: this action is brought in good faith; Appellant is a poor person and does not possess sufficient means to employ the services of legal counsel; Appellant is a layman unskilled in the law and does not possess the legal knowledge and skill which is imperative to litigate this action. Wherefore, Appellant respectfully moves the Honorable Court pursuant to 28 U.S.C. §1915(d) to appoint counsel to aid and represent him in the presentation of his cause.

Dated: August 9, 1978.

Respectfully submitted,

/s/ Henry Albert Smith
Appellant, pro se

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IN THE SUPREME COURT OF THE UNITED STATES

WASHINGTON, D. C.

78-5551

HENRY ALBERT SMITH,

APPELLANT,

VS.

NO. _____

JAMES C. WOODARD AND MEMBERS OF THE STATE OF NORTH CAROLINA PAROLE COMMISSION,

APPELLEES.

PETITION FOR WRIT OF CERTIORARI UNDER 28 U. S. C. §§ 1651(a)

TO: THE CHIEF JUSTICE AND THE ASSOCIATES JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

1.

Comes the appellant Henry Albert Smith, in propria persona, and moves the Court for the issuance of a writ of certiorari to review the decision of the United States Court of Appeals for the Fourth Circuit, affirming the decision of the United States District Court for the Eastern District of North Carolina in the case. A copy of the opinion of the United States Court of Appeals for the Fourth Circuit filed September 11, 1978 and certified on September 11, 1978, is attached hereto.

STATEMENT OF THE CASE

2.

The appellant was tried in the Superior Court of Wake County, North Carolina, at the May 30th 1975 Session before the Honorable Thomas H. Lee, Judge Presiding and a jury. The appellant on a bill of indictment charging him with assault with a deadly weapon with intent to kill inflicting serious injury. (R p 38). The appellant was sentenced to a term of imprisonment in the State's Prison of a period of not less than 8 nor more than 10 years. (R pp 39, 40).

3.

Appellant was represented at the trial of the action by Mr. Gerald L. Bass, Esquire, Court-appointed attorney of the Wake County Bar.

4.

That the aforesaid verdict and judgment was appealed to the North Carolina Court of Appeals, and in January 1976, that court found no error in the trial below.

State v. Smith, ___ N. C. App. _____.

5.

NOTE: The statement of the case set out above is not the case presently before the Court for further review on writ of certiorari.

6.

The case that is presently before the Court is from a Civil Action that the appellant filed in the United States District Court for the Eastern District of North Carolina, under Sections 42 U.S.C. § 1983, 28 U.S.C. § 1343 and 28 U.S.C. §§ 2201 and 2202, against the appellees aforesaid, for denying parole to him by taking into consideration the following: (1) Appellant's prior convictions of assault and burglary, which charges he was not convicted of: (2) By the use of parole criteria which are vague and ambiguous, Billiteri v. United States Board of Parole, 385 F. Supp. 1217 (W.D.N.Y. 1974): (3) Failure to apply "due process" to the parole hearing, Childs v. United States Board of Parole, 511 F. 2d 1270 (D.C. Cir. 1974): (4) Denying parole to him because he was in Close Custody and not in Honor Grade: (5) By considering the appellant as being of an assaultive nature, in the absence of substantive evidence to support such a claim: (6) By taking into consideration that a detaindr had been filed against him by the Adult Probation Authorities, Columbus, Ohio, as a parole violator from a 1963 conviction for murder in the second degree in that State, which detainer, if one had been filed against appellant, it was not served on him within one year as required under Section 1(b) and (c) of the Uniform Mandatory Disposition of Detainers Act, 1958): (7) By the imposition and use of appellant's 1963 conviction for murder in the second degree as a basis to support such a denial, and (8) By taking into consideration the nature and circumstances of him crime, the 8-10 year sentence mentioned in the statement of the case above, which is, or appear to be, equivalent to the phrase "the seriousness of his crime" and using it as a basis to support such a denial. See a copy of Ms. Mary R. Logan's letter to appellant dated March 17, 1977, designed as Exhibit B, attached hereto. The matter in controversy exceeds, exclusive of interest and costs, the amount of $10,000,00. Appellant now seeks discretionary review of the decision of the United States Court of Appeals for the Fourth Circuit.

7.

GROUNDS FOR DISCRETIONARY REVIEW

Appellant's grounds for seeking discretionary review are as follows:

(a) That the United States Court of Appeals for the Fourth Circuit erred as a matter of law by its failure to apply applicable constitutional provisions and statutes in this case.

(b) That the United States Court of Appeals for the Fourth Circuit erred in denying the appellant's Sixth Amendment rights to counsel for the presentation of his cause, by denying his motion for the appointment of counsel.

(c) That the United States Court of Appeals for the Fourth Circuit erred in basing its decision with the decision of the United States District Court for the Eastern District of North Carolina without reaching an independent decision on the case.

(d) That the appellant's rights to be free from cruel and unusual punishment, as guaranteed to him in the Eighth Amendment was violated and the opinion on the United States Court of Appeals for the Fourth Circuit regarding that issue was either erroneous, misrepresented or moot. Morris v. United States, 399 F. Supp. 720 (E.D. VA. 1975).

That the record will affirmatively show that the appellees, in denying parole to appellant, erroneously took into consideration that he has had prior convictions of assault and burglary. Appellant admits that those charges may have been brought against his in 1952 or 1953 while he was living in Niagara Falls, New York but that if they were, they were subsequently dismissed and therefore no convictions resulted therefrom. The fact that the appellees, in denying parole to appellant, did take into consideration that he has had prior convictions of assault and burglary, were the consideration of invalid past convictions, Wren v. United States Board of Parole, 389 F. Supp. 398 (N.D. Ga. 1975), in violation of appellant's constitutional rights to due process of law, regardless of any statutory or discretionary provisions, and the opinion of the United States Court of Appeals for the Fourth Circuit regarding that issue is erroneous and in direct opposition to the decisions of the United States Supreme Court in Morris v. United States, supra., and Wren v. United States Board of Parole, supra.

That the appellant's constitutional rights to due process of law and equal protection of the law, as guaranteed to him in the Fifth and Fourteenth Amendments have been flagrantly violated and the decision of the United States Court of Appeals for the Fourth Circuit regarding those issues were either erroneous, misrepresented or moot.

The record is clear in this particular case that the appellees, in denying parole to appellant, erroneously took into consideration his previous criminal record, his assaultive nature, his custody grade, that is, Close Custody; his prior convictions of

assault, burglary and murder in the second degree, his previous criminal involvement and not being in Honor Grade, and using the same as a basis for such a denial. Whereas, these statements are conclusory statements not supported by substantive evidence and are insufficient for the utilization by the appellees to justify their denial of parole to appellant, Robinson v. United States Board of Parole, 403 F. Supp. 638 (W.D.N.Y. 1975); Kholman v. Norton, 380 F. Supp. 1073, 1075 (D. Conn. 1974), and the opinion of the United States Court of Appeals for the Fourth Circuit regarding those issues are either erroneous, misrepresented or moot. For more information stating the reasons as to why the appellant was denied parole, see Exhibit A, attached hereto.

That the appellant's constitutional rights, as guaranteed to him in the Fifth and Fourteenth Amendments, have been flagrantly violated by the action of the appellees, and subjected him to be twice put in jeopardy for the same offense, when they erroneously took into consideration the following, in pertinent part:

> "...Because of the nature and circumstances of your crime, your custody grade and the fact that you have a detainer filed against you by the Adult Probation Authorities, Columbus, Ohio; we do not feel that you deserve parole consideration at this time. Sinceeyou are wanted on a life sentence with the Columbus, Ohio Authorities; ...."

For more information relating to the above quoted matter, see Exhibit B, Attached hereto.

Again, the opinion of the UNITED STATES COURT OF APPEALS FOR THE CIRCUIT regarding those issues were either erroneous, overlooked, misrepresented or moot.

That the above quoted statement that: "...Since you are wanted on a life sentence with the Columbus, Ohio Authorities; ....", is referring to appellant's February 7, 1963 conviction for murder in the second degree in Columbus, Ohio, wherein he was sentenced to serve a term of imprisonment of 10 years to life in the Ohio State Penitentiary. However, after the appellant served the minimum of that sentence, 10 years, in 1970 or 1971, he was paroled from Ohio to Raleigh, North Carolina, his home, where he was to be on parole for 5 years. Therefore any reference made by the appellees regarding that conviction and sentence to use as a basis to deny the appellant parole, would certainly put him in double jeopardy, in violation of his constitutional rights, as guaranteed to him in the Fifth and Fourteenth Amendments. It follows that the appellees have erroneously misinterpreted a very significant fact in this case, in that the appellant is not wanted on a life sentence with the Columbus, Ohio Authorities. Rather, if he

is wanted at all, he could only be wanted as a parole violator as a result of his current conviction and sentence. That, even if the appellant was wanted on a life sentence in Ohio, in the sense the appellees have made it appear and a detainer had been filed against him from that State and served on him in accordance with Section 1(b) and (c) of the Uniform Mandatory Disposition of Detainers Act (1958), it would still be a frivolous basis to employ and use to deny him parole. These points of facts were either overlooked or misrepresented by both the United States Court of Appeals for the Fourth Circuit and also by the United States District Court for the Eastern District of North Carolina. (Emphasis added).

To the Close Custody issue, the appellant contended that under the circumstances, his will and his desire could not or should not have been a controlling fact to use as a basis to deny him parole. It must need be noted here that the North Carolina State Penitentiary is the State's maximum security facility, and that when the appellant entered that facility on his 8-10 year sentence, May 30, 1975, that he entered as a "Safekeeper" since he could not post the $10,000.00 appeal bond that was set in the case. This safekeeper must then be some form of custody level in itself. In any event, it appears to be the general rule or policy of the appellees after a certain period of time may, in their discretion, change the prisoner's custody level from whatever custody level he may have been in, to either Close Custody, Medium Custody or Honor Grade. The important point here is that after the appellees put the appellant in Close Custody and then use that Close Custody level as a basis to deny him parole, then their action would certainly go far beyond acts of mere discretion.

To the issue of appellant being denied parole by the appellees on the basis of his "assaultive nature", he contended that such a statement is a conclusory statement not supported by the record since he has had only one conviction of assault. Robinson v. United States Board of Parole, supra., and Kholman v. Norton, supra. Again, the decision of the United States Court of Appeals for the Fourth Circuit regarding that issue was either erroneous, overlooked, misrepresented or moot.

That, in the spring of 1976 Congress enacted into law the "Parole Commission and Reorganization Act," 18 U.S.C. § 4201 et seq. (90 Stat. 219, Pub. L. 94-233). Under this new Act are many rights which represent, for the most part, a codification of many recent federal court decisions. However, these federal regulations do not apply to state prisoners, because they are federal laws, but because they do represent a codification of many federal court decisions that dealt with the parole process, the appellant urged the courts to apply these federal laws, including Section 1(b) and (c)

of the Uniform Mandatory Disposition of Detainers Act, (1958), to his case, because the appellees' parole criteria for the granting and/or denial of parole to prisoners under its jurisdiction, appears to be inconsistent with these federal laws, or their application thereof, which may invariably account for the overcrowded population of the North Carolina State penal system. Rather than set out the complete Act, below are listed summaries of the more important provisions and rights within the parole process:

1) At least 30 days prior to your parole hearing you must be provided with: (1) written notice of the time and place of the proceeding and (2) reasonable access to any reports or other documents to be used by the Commission in making its decision. 18 U.S.C. s/s 4206,

n) You are entitled to representation at your parole hearing. The rules and regulations that such representatives must comply with shall be promulgated by the Commission. Such rules shall not exclude lawyers as a group. 18 U.S.C.s/s 4208,

o) You are entitled to appear and speek in your own behalf at the hearing.

p) A full and complete record of every proceeding must be kept by the Commission and upon request the Commission must make this record available to you. 18 U.S.C. s/s 4208, and

q) If you are denied parole a conference should be set up between you and the Commission, or the examiners thereof, to explain the reasons why you were denied. This conference should include advice to you as to what steps you might take to enhance your chances of making parole at your next hearing. 18 U.S.C. s/s 4208.

That the application of the Parole Commission and Reorgainzation Act, 18 U.S.C. § 4201 et seq. (90 Stat. 219, Pub. L. 94-233), to state parole proceedings seems to be more in keeping with the Ancient Precedents, which states, in pertinent part:

> "And I charge you judges at this time, saying Hear the causes between your brethern, and judge righteously between every man and his brother, and the stranger that is with him.
>
> "Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cause that is too hard for you, bring it unto me, and I will hear it." __Deuteronomy, 1, 16-17.
>
> "We shall not make any justiciaries, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it." ___Magna Charta, XLV.

The appellant further contended, with respect to the detainer mentioned above, that what he received from the appellees was not a detainer: that it was only a copy of a letter dated October 26, 1976 from the appellees to the Adult Probation Authorities, Columbus, Ohio, informing them of his 8-10 year current sentence and was therefore not a valid detainer. See a copy of that letter, designed as Exhibit C,

attached hereto. (Emphasis added).

That, the record will show that the appellant requested the appellees, through the court below, to submit their regulation governing parole procedure and criteria for the granting and/or denial of parole to prisoners of each institution under its jurisdiction, and a list of proposed procedures and criteria that would comply with the Court's declaration and order of the First, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States. Accordingly, the appellees submitted their parole proceedings and criteria, which, the appellant admits, if followed, would have grately enhanced his chances for making parole. Whereas, the appellees could not and did not in this p-articular case, submit parole proceedings and criteria consistent with the basis upon which he was denied parole.

Appellant contends that for reasons hereinabove set forth that issues raised in this case under the Fifth, Sixth, Eighth and Fourteenth Amendments involves legal principles of major significance to the jurisprudence of the State of North Carolina and that the decision of the United States Court of Appeals for the Fourth Circuit regarding those issues appears to be in conflict with decisions of the United States Supreme Court, supra.

Wherefore, the appellant respectfully request that the Supreme Court certify this cause for discretionary review upon the grounds set out above, and request other and further relief that the Court deems to be appropriate and just.

Respectfully submitted;

s/s Henry Albert Smith

Appellant, Pro se.

FORMA PAUPERIS AFFIDAVIT

I own nothing of value except the following:

	VALUE
Land	$ 0
Automobile and personal property	$ 0
Bank Deposits	$ 0
MONEY .....(See.attached.balance.card).....	$ 0

Inmate Prison Trust Fund Balance Card attached and made a part hereof.

I certify that I am a pauper and unable to pay the costs and fees or give security therefor to prosecute this petition, and therefore I request leave to proceed in forma pauperis.

s/s Henry Albert Smith

STATE OF NORTH CAROLINA)
)
COUNTY OF CASWELL) SS: VERIFICATION

Henry Albert Smith, being first duly sworn under oath, deposes and says: That he has subscribed to the above and states that the information contained therein is true and correct to the best of his knowledge and belief.

s/s Henry Albert Smith

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 9 DAY OF October, 1978.

Patricia M. Teague
NOTARY

My commission expires June 15 1983

EXHIBIT A. COPY

State of North Carolina
Parole Commission
831 West Morgan Street
Raleigh 27603

Telephone 733-2111

James B. Hunt, Jr.
Governor
Jack Scism
Chairman

Commissioners
Grady D. Davis
C. Dempsey McDaniel
James E. Cline
Mrs. Isabel S. Holmes

March 3, 1977

Mr. Henry Albert Smith, 20128-92, MRL
Central 3100

Dear Mr. Smith:

The Parole commission has carefully considered your case and concluded that parole should not be granted at this time. The Commission, in reaching its decision, took into consideration your previous criminal record, your assaultive nature and your custody grade.

Our records indicate that you have p-rior convictions of Assault, Burglary and Murder In The Second Degree. You are in Close Custody, therefore, making you ineligible for parole consideration on your parole eligibility date May 29, 1977.

Because of your previous criminal involvement and your assaultive nature the Commission was unable to conclude that there is reasonable probability that you will live and remain in liberty without violating the law if paroled at this time. Because you are not now a Honor Grade, the Commission feels that further consideration of your case should be deferred until you have been promoted to that custody level and demonstrated your willingness and ability to handle the additional freedoms and responsibilities of that custody level. The Commission is of the opinion that your continued correctional treatment will substantially enhance your capacity to lead a law-abiding life when released at a later date.

Your file will be reviewed again on February 25, 1978.

Sincerely,

s/s
Mary R. Logan

Case Analyst

MRL/tw

cc: Unit Superintendent

EXHIBIT B. COPY

STATE OF NORTH CAROLINA
PAROLE COMMISSION
831 WEST MORGAN STREET
RALEIGH, 27603

JAMES L. HUNT, JR.
GOVERNOR
JACK SCISM
CHAIRMAN

COMMISSIONERS
GRADY D. DAVIS
C. DEMPSEY MCDANIEL
JAMES E. CLINE
MRS. ISABEL S. HOLMES

MARCH 17, 1977

MR. HENRY ALBERT SMITH, 20128-92, MRL
CENTRAL 3100

Dear Mr. Smith:

According to our FBI Record, you were charged with assault and Second Degree Burglary during 1952 while living in Niagara Falls, New York. You were held for trial and indictment was dismissed.

Because of the nature and circumstances of your crime, your custody grade and the fact that you have a detainer against you by the Adult Probation Authorities, Columbus, Ohio; we do not feel that you deserve parole consideration at this time. Since you wanted on a like sentence with the Columbus, Ohio Authorities; there is a possibility that the Commission will review your file and consider you for parole to this detainer on your next scheduled review February 25, 1978.

Just as soon as you have been promoted to Medium Custody, please advise this office and we will take your case to the Commission in order to determine whether they want to parole you to this detainer.

Sincerely,

/s/ _____
Mary R. Logan

Case Analyst

MRL/ bw

EXHIBIT C.

Department of Correction
Division of Prisons
831 West Morgan Street
Raleigh, N. C. 27603

COPY

October 26, 1976

Ralph D. Edwards
Director of Prisons

David L. Jones
Secretary

MRU
DETAINER
3100

Don A. Carlisle
Duputy Administrator
Adult Parole Authority
1050 Freeway Drive, N.
Columbus, Ohio 43229

Re: Henry Albert Smith 55778-324-20128-92
Your Detainer: Parole Violator (Life sentence for murder, 2nd Degree)

(Institution No. 0C1 116569)

We have received and recorded your detainer/notification. During the month preceeding discharge, we will nitify you of the final release date.

Present Sentence: 8-10 years
Additional Sentence(s) None
Location: Central Prison, Raleigh, North Carolina
Previous Notification or Detainers: None

It is requested that you notify this office when disposition is made of your charge. Please include the inmate's prison number on all correspondence pertaining to him. It is Departmental policy to deny inmates with serious detainers minimum custody privileges such as work release, home leave, community leave, study release, and other outside activities. This notice is particularly important where you decide not to prosecute or the charges are otherwise disposed of in a manner favorable to the inmate involved.

Sincerely yours,

s/ _____
Ben L. Baker, Supervisor
Combined Records

cc: Unit Head
Inmate /
Combined Records

COPY

UNITED STATES COURT OF APPEALS
FOURTH CIRCUIT

WILLIAM K. SLATE, II
CLERK

TELEPHONE 782-2213
AREA CODE 804
TENTH AND MAIN STREETS
RICHMOND, VIRGINIA 23219

September 11, 1978

TO: Mr. Henry Albert Smith
Jacob. L. Safron, Esquire

CLERK'S MEMORANDUM

In compliance with Rules 36 and 45(c) of the Federal Rules of Appellate Procedure, you are advised that the judgment in case No. 78-8064 was entered this date. A copy of the court's opinion, and a blank bill of costs (omitted in criminal cases) is enclosed.

I would invite your particular attention to Rules 39(c), 40(a), and 41(b) of the Federal Rules of Appellate Procedure.

Please be advised that the policy of this court requires that petitions for rehearing, regardless whether the case was fee paid or in forma pauperis, be filed in fifteen copies.

When it has been determined that a stay of the mandate is an appropriate course of action, then an original petition only (no copies) to stay the mandate need be filed.

WILLIAM K. SLATE, II
CLERK

Enclosures

Rev. 9-1-76

UNPUBLISHED

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 78-8064

Henry Albert Smith,

Appellant,

v.

James C. Woodard and Members of the State of North Carolina Parole Commission,

Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. John D. Larkins, Jr., District Judge.

Submitted: August 17, 1978 Decided: September 11, 1978

Before WINTER, BUTZNER, and RUSSELL, Circuit Judges.

(Henry Albert Smith, Appellant Pro Se. Jacob L. Safron, Special Deputy Attorney General, for the Appellees.)

PER CURIAM:

A review of the record and of the district court's opinion discloses that an appeal from the order of the district court refusing habeas corpus relief would be without merit. Accordingly, although leave to proceed in forma pauperis is granted, a certificate of probable cause to appeal is denied and the appeal is dismissed for the reasons stated by the district court. Smith v. Woodard, C/A No. 77-315-CRT (E.D.N.C., Jan. 5, 1978).

78-5551

JUDGMENT ON DECISION BY THE COURT

FILED

JAN 1

JOHN R. WHITTY, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

United States District Court

FOR THE

EASTERN DISTRICT OF NORTH CAROLINA

CIVIL ACTION FILE NO. 77-315-CRT

HENRY ALBERT SMITH

vs.

JAMES C. WOODARD, ETC.,

JUDGMENT

This action came on for ~~trial~~ (hearing) before the Court, Honorable John D. Larkins, Jr. Chief, United States District Judge, presiding, and the issues having been duly ~~tried~~ (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the Defendant's motion for summary judgment be, and the same is hereby granted; and this case is hereby DISMISSED; No costs taxed.

THE ABOVE JUDGMENT HAS BEEN ENTERED TODAY, JANUARY 16, 1978, AND A COPY MAILED TO:

Mr. Henry Albert Smith
835 W. Morgan St.
Raleigh, North Carolina

Mr. Jacob L. Safron
Special Deputy Attorney General
P.O. Box 629
Raleigh, North Carolina

The Honorable John D. Larkins, Jr.
Chief, United States District Judge
Eastern District of North Carolina
Trenton, North Carolina

Dated at Raleigh, North Carolina, this 16 th day of January, 19 78 .

JOHN R. WHITTY
Clerk of Court

R W Esmond
Deputy Clerk

78-5551

FILED

JAN

JOHN R. WHITTY, CLERK
U. S. DISTRICT COURT
E. DIST. NO. CAR.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NORTH CAROLINA

RALEIGH DIVISION

NO. 77-315-CRT

HENRY ALBERT SMITH)
)
VERSUS) MEMORANDUM OPINION AND ORDER
)
JAMES C. WOODARD, etc.)

LARKINS, CHIEF DISTRICT JUDGE:

This case is before the Court on Defendant's MOTION FOR SUMMARY JUDGMENT. The Plaintiff alleges violations of his constitutional and civil rights have been committed by the Defendant, in that he was denied parole by the North Carolina Parole Commission, which the Defendant chairs; and also that the presence of a detainer filed by the State of Ohio with regard to his parole violation there constitutes double jeopardy.

With regard to the first contention of the Plaintiff, a review of the record in this case reveals no allegations or set of facts which constitute a violation of constitutional dimensions. There has been no abuse of discretion; this conclusion is supported by the realities of the prisoner's confinement status at the time he was considered for parole, and his prison record.

With regard to the plaintiff's seoond contention, the facts support the conclusion and finding that it has no merit. MOODY V DAGGETT, 429 U.S. 78 (1976); GADDY V MICHAEL, 519 F.2d 669 (1975, 4th Cir.).

NOW THEREFORE, in accordance with the foregoing, it is ORDERED that the Defendant's MOTION FOR SUMMARY JUDGMENT be, and the same is hereby GRANTED; and this case is hereby DISMISSED; and the Clerk is to serve copies of this ORDER upon the parties.

AT TRENTON, NORTH CAROLINA

JANUARY 4, 1978

JOHN D. LARKINS, JR.
CHIEF DISTRICT JUDGE

A True Copy, Teste:
John R. Whitty, Clerk
By R. W. Eason
Deputy Clerk

P-034-B